

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: James F. McCallen )  
Dist. 4, Map 88O, Group N, Control Map 88N, ) Dyer County  
Parcel 31.01, S.I. 000 )  
Residential Property )  
Tax Year 2007 )

## INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$18,700	\$104,900	\$123,600	\$30,900

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 4, 2008 in Jackson, Tennessee. In attendance at the hearing were James F. McCallen, the appellant, and Janie Gregson, Dyer County Property Assessor.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence constructed in the late 1800's located at 216 Tucker Street in Dyersburg, Tennessee. Subject property is located in an area bordering both residential and commercial properties.

The taxpayer contended that subject property should be valued at \$73,000. In support of this position, the taxpayer argued that subject property experiences a significant diminution in value because of its poor physical condition, crime, and the number of nearby commercial enterprises, rental properties and substandard homes.

The taxpayer's contended value of \$73,000 was based primarily on the May 16, 2005 sale of the home at 312 Tucker Street for \$73,000. The taxpayer also introduced the June 14, 2007 sale of the home at 703 Troy Avenue for \$85,000.

The assessor initially contended that subject property should remain valued at \$123,600. In support of this position, two comparable sales were introduced into evidence. However, after reviewing the taxpayer's proof concerning the condition of his home, Ms. Gregson recommended a value of \$100,000-\$123,000. Ms. Gregson stated that she was not previously aware of the condition of subject home.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$100,000. As will be discussed below, the

administrative judge finds the taxpayer introduced insufficient evidence to substantiate his contention of value. However, the administrative judge finds that subject property experiences a loss in value due to its physical condition. Absent additional evidence from the taxpayer, the administrative judge finds that the \$100,000 value recommended by the assessor of property establishes the upper limit of value.

The administrative judge finds that subject property clearly experiences a loss in value due to its physical condition. The administrative judge finds that Mr. McCallen's testimony and exhibit depicted, among other things, foundation problems, plumbing problems, water damage, etc.

Respectfully, the administrative judge finds that the taxpayer introduced insufficient evidence to quantify the loss in value. The administrative judge finds that the two sales relied on by Mr. McCallen cannot provide a basis of valuation for any of several reasons. The administrative judge would initially observe that neither sale was adjusted. See *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) wherein the Assessment Appeals Commission addressed the need to adjust comparables as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2. Moreover, both sales were by banks that acquired the homes through foreclosure. The administrative judge finds that the State Board of Equalization has historically rejected foreclosure sales as being indicative of market value. See, e.g., *Richard F. Laroche* (Assessment Appeals Commission, Rutherford Co., Tax Year 1994); and *Armed Services Mutual Benefit Association* (Assessment Appeals Commission, Davidson Co., Tax Years 1991 and 1992). Finally, the administrative judge finds that the June 14, 2007 sale occurred long after the relevant assessment date of January 1, 2007 and is therefore irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one

must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt’s claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the “stigma.” The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor’s attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . .was too high. In support of that position, she claimed that. . .the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

Based upon the foregoing, the administrative judge would normally have little choice except to affirm the current appraisal of \$123,600 based upon the presumption of correctness attaching to the decision of the Dyer County Board of Equalization. In this case, however, the administrative judge finds that the assessor has recommended a significant reduction in value due to the physical condition of subject home. The administrative judge finds the assessor’s recommendation reasonable and adopts it as establishing the upper limit of value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$18,700	\$81,300	\$100,000	\$25,000

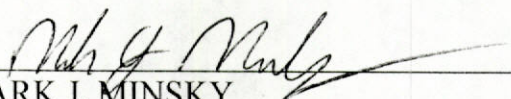
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of March, 2008.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. James F. McCallen  
Janie Gregson, Assessor of Property